

all variation margin collateral shall be calculated as the sum of those values of each eligible collateral asset.

(c) *Monitoring obligation.* A covered swap entity shall monitor the market value and eligibility of all collateral collected and posted to satisfy the margin requirements of §§ 23.150 through 23.161. To the extent that the market value of such collateral has declined, the covered swap entity shall promptly collect or post such additional eligible collateral as is necessary to maintain compliance with the margin requirements of §§ 23.150 through 23.161. To the extent that the collateral is no longer eligible, the covered swap entity shall promptly collect or post sufficient eligible replacement collateral to comply with the margin requirements of §§ 23.150 through 23.161.

(d) *Excess margin.* A covered swap entity may collect or post initial margin or variation margin that is not required pursuant to §§ 23.150 through 23.161 in any form of collateral.

**§ 23.157 Custodial arrangements.**

(a) *Initial margin posted by covered swap entities.* Each covered swap entity that posts initial margin with respect to an uncleared swap shall require that all funds or other property that the covered swap entity provides as initial margin be held by one or more custodians that are not the covered swap entity, the counterparty, or margin affiliates of the covered swap entity or the counterparty.

(b) *Initial margin collected by covered swap entities.* Each covered swap entity that collects initial margin required by § 23.152 with respect to an uncleared swap shall require that such initial margin be held by one or more custodians that are not the covered swap entity, the counterparty, or margin affiliates of the covered swap entity or the counterparty.

(c) *Custodial agreement.* Each covered swap entity shall enter into an agreement with each custodian that holds funds pursuant to paragraphs (a) or (b) of this section that:

(1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repur-

chase agreement or other means) the collateral held by the custodian except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in § 23.156(a)(1)(iv) through (xii), such asset is held in compliance with this section, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions including in the event of bankruptcy, insolvency, or a similar proceeding.

(3) Notwithstanding paragraph (c)(1) of this section, a custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral posted or collected pursuant to § 23.152, the agreement requires the posting party, when it substitutes or directs the reinvestment of posted collateral held by the custodian.

(i) To substitute only funds or other property that would qualify as eligible collateral under § 23.156, and for which the amount net of applicable discounts described in § 23.156 would be sufficient to meet the requirements of § 23.152; and

(ii) To direct reinvestment of funds only in assets that would qualify as eligible collateral under § 23.156, and for which the amount net of applicable discounts described in § 23.156 would be sufficient to meet the requirements of § 23.152.

**§ 23.158 Margin documentation.**

(a) *General requirement.* Each covered swap entity shall execute documentation with each counterparty that complies with the requirements of § 23.504 and that complies with this section, as applicable. For uncleared swaps between a covered swap entity and a counterparty that is a swap entity or a financial end user, the documentation shall provide the covered swap entity with the contractual right and obligation to exchange initial margin and variation margin in such amounts, in